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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

(Assigned to Judge Smith, located in the Santa Ana Division)

In re

CALIFORNIA POWER EXCHANGE
CORPORATION,

Reorganized Debtor.

Case No.: 2:01-bk-16577-ES

Chapter 11

**REORGANIZED DEBTOR'S
MOTION FOR ORDER IN AID OF
CONSUMMATION OF CHAPTER 11
PLAN APPROVING FINAL CLEARING
OF ITS MARKETS, PAYMENT OF
CLASS 6 AND 7 CLAIMS, AND WIND
DOWN OF OPERATIONS PURSUANT
TO CONFIRMED AND EFFECTIVE
PLAN AND AN ORDER OF THE
FEDERAL ENERGY REGULATORY
COMMISSION; MEMORANDUM OF
POINTS AND AUTHORITIES**

**[Declaration of David K. Gottlieb filed
concurrently herewith]**

**[No hearing requested pursuant to LBR
9013-1(o)]**

**TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE,
THE OFFICE OF THE UNITED STATES TRUSTEE, THE FEDERAL ENERGY
REGULATORY COMMISSION, CALPX/CAISO MARKET PARTICIPANTS THAT ARE
OWED/OWING REFUND AMOUNTS PURSUANT TO THE FERC REFUND**

**PROCEEDING¹ AND PARTIES ON THIS COURT'S ECF SERVICE LIST AND/OR
REQUESTING SPECIAL NOTICE:**

By this Motion, California Power Exchange Corporation (the "Reorganized Debtor" or "CalPX") seeks an order of this Court approving the funds distribution, market clearing, and corporate wind down procedures (the "Procedures") set forth in the May 20, 2021 *Order Accepting Settlement Overlay Compliance Filing (San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange)*, 175 FERC ¶ 61,121 (2021) (the "FERC Overlay Order") of the Federal Energy Regulatory Commission ("FERC"), a copy of which is annexed to the concurrently filed *Reorganized Debtor's Request for Judicial Notice in Support of Reorganized Debtor's Motion for Order in Aid of Consummation of Chapter 11 Plan Approving Final Clearing of Its Markets, Payment of Class 6 And 7 Claims, and Wind Down of Operations Pursuant to Its Confirmed and Effective Plan and an Order of the Federal Energy Regulatory Commission ("RFJN")* as Exhibit A thereto. Certain provisions of the *Official Committee of Participant Creditors' Fifth Amended Chapter 11 Plan, as Modified (Revised October 1, 2002)* (the "Plan")² are made expressly subject to orders of FERC such as the FERC Overlay Order. This Court's approval of the Procedures approved by FERC will permit CalPX to: (1) perform the final clearing of its 2000-2001 energy markets; (2) pay the Class 6 and 7 Claims, which are the final remaining claims to be paid under the Plan; and (3) wind down CalPX's operations, so that CalPX may conclude its chapter 11 case (the "Case") and dissolve its corporate entity. This Motion is supported by the *Declaration of David Gottlieb in Support of Reorganized Debtor's Motion for Order in Aid Of Consummation of Chapter 11 Plan Approving Final Clearing of Its Markets, Payment of Class 6 And 7 Claims, and Wind Down of Operations Pursuant to Its Confirmed and Effective Plan and an Order of the Federal Energy Regulatory Commission* (the "Gottlieb Declaration") filed concurrently herewith.

¹ The movant is also emailing parties to the FERC Refund Proceeding Docket EL00-95 who are on FERC's email service list for that docket.

² Capitalized terms that are not expressly defined herein shall have the meanings ascribed to such terms in the Plan. The Plan is annexed to the Confirmation Order (defined below).

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Motion constitutes a near final step toward the conclusion of this postconfirmation Case. More than nineteen years ago, on November 1, 2002, this Court entered its Confirmation Order confirming the Plan, which provides for certain distribution procedures that are expressly subject to replacement by alternative terms that may be approved by FERC. Approximately eighteen years after the April 1, 2003 Effective Date of the Plan, FERC, on May 20, 2021, issued its FERC Overlay Order, which approved the calculation of “refunds for transactions that took place in the California organized markets during the Refund Period (October 2, 2000 – June 20, 2001)” and approved steps for market clearing and the wind down of CalPX. The FERC Overlay Order thereby facilitates distributions to Plan Classes 6 and 7, which distributions were dependent on a FERC order under the express terms of the Plan. Plan § III.C.3, Classes 6 and 7 (timing distributions for when “distribution has been authorized or allowed by FERC”). The distribution procedures approved by FERC in the FERC Overlay Order differ from much of the distribution terms set forth in Plan Exhibit 3 *Allowance and Distribution Procedures*; nevertheless, they become the distribution procedures under the Plan by such express Plan terms (as identified below). By this Motion, the Reorganized Debtor asks this Court to approve the same distribution, market clearing, and wind down Procedures approved by FERC in the FERC Overlay Order, thereby permitting distributions to Plan Classes 6 and 7.

II.

JURISDICTION

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this Case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a) and 1142(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 3020(d) and 3021 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).³ Also, this Court retained jurisdiction regarding

³ 11 U.S.C. §§ 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate

1 this Case in its *Order (Revised October 28, 2002) Confirming Official Committee of Participant*
2 *Creditors' Fifth Amended Chapter 11 Plan, as Modified (Revised October 1, 2002)*, entered
3 November 1, 2002 [Docket No. 1001-1] (the "Confirmation Order"). Confirmation Order ¶ 17,
4 referencing Plan § IV.G. *See Stone v. 350 Encinitas Invs., LLC (In re 350 Encinitas Invs., LLC)*, 313
5 F' Appx 70, 72 (9th Cir. 2009) (bankruptcy court retains jurisdiction to interpret own orders).

6 **III.**

7 **BACKGROUND**

8 **A. CalPX's Plan of Reorganization**

9 CalPX is a California nonprofit public benefit corporation established by the California
10 legislature in 1997 to operate wholesale electricity markets as part of California's electric industry
11 restructuring. CalPX is a public utility under the jurisdiction of FERC pursuant to section 201 of the
12 Federal Power Act, 16 U.S.C. § 824 (the "FPA"). As a result of the 2000-2001 California electricity
13 crisis and several market participants' nonpayment of amounts due to the CalPX clearinghouse for
14 purchased electricity, CalPX commenced its Case on March 9, 2001, by filing a voluntary chapter 11
15 petition under the Bankruptcy Code. Under the terms of the Plan, its Effective Date occurred on
16 April 1, 2003 (the "Effective Date"), following notice to FERC and FERC's approvals, as addressed
17 in the Confirmation Order and the Plan.

18 Under the Plan, Class 6 and Class 7 Claims are Claims of CalPX market participants and of
19 the California Independent System Operator ("CalISO"). CalPX market participants are categorized
20 as: (1) the investor-owned utilities or "IOUs," consisting of Pacific Gas & Electric Company,
21 Southern California Edison Company and San Diego Gas & Electric Company, or any of them or (2)
22 "Participant Creditors," which are all Claimants other than the IOUs that signed CalPX Participation
23

24 to carry out the provisions of this title.); 1142(b) ("The court may direct the debtor and any other necessary
25 party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer
26 of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien,
27 that is necessary for the consummation of the plan."); Fed. R. Bankr. P. 3020(d) ("Notwithstanding the entry
28 of the order of confirmation, the court may issue any other order necessary to administer the estate."); 3021
("Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose
claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture
trustees who have filed claims under Rule 3003(c)(5) that have been allowed."). *See In re TE Holdcorp, LLC*,
2021 Bankr. LEXIS 1301, at *13 (Bankr. D. Del. May 14, 2021) ("The power the Court retains under
Bankruptcy Rule 3020(d) is parallel to the Court's power under Bankruptcy Code section 1142(b).").

1 Agreements or which assert they are owed money for sales into the markets administered by the
2 CalISO, for which CalPX acted as a scheduling coordinator. Class 6 claims include: (a) Refund
3 Claims of IOUs and Participant Creditors arising from transactions in CalPX's markets and (b)
4 claims arising from transactions in the CalISO markets for which CalPX acted as a scheduling
5 coordinator for Participant Creditors. Class 7 claims include: (i) claims arising from transactions in
6 the CalISO markets for which CalPX acted as a scheduling coordinator for the IOUs and (ii) all
7 claims of the CalISO. Plan § III.C.3, Classes 6 and 7.

8 The Plan provides that payment of Class 6 and Class 7 claims shall occur when "authorized
9 or allowed by FERC." *Id.* The Plan's *Allowance and Distribution Procedures*, which are annexed
10 to the Plan as its Exhibit 3, state that the procedures for determining amounts allowed on such claims
11 and the manner of payment shall be as established pursuant to "rule, order or judgement of FERC"
12 or of a Court other than the bankruptcy court having jurisdiction over the matter. *Id.* Exh. 3 § B.1.
13 This provision of the *Allowance and Distribution Procedures* of the Plan comports with section 201
14 of the FPA, 16 U.S.C. § 824, which provides FERC with jurisdiction over the transmission and sale
15 for resale of electric energy in interstate commerce. As part of FERC's jurisdiction over wholesale
16 electricity sales, section 205 of the FPA requires that rate schedules for the sale of wholesale
17 electricity be filed with FERC and that all such rates must be "just and reasonable." *Id.* § 824(d).

18 **B. CalPX's Participation in the FERC Refund Proceeding**

19 Since 2000, CalPX has been a party to the FERC Docket No. EL00-95 et al., known as the
20 "FERC Refund Proceeding" by which the amounts owed and owing to the Class 6 and Class 7
21 Claimants have been litigated. Pursuant to this litigation, CalPX was tasked with recalculating its
22 2000-2001 energy markets based on criteria determined by FERC to ensure just and reasonable
23 wholesale electricity rates during the refund period. CalPX was also directed to calculate refunds
24 owing from sellers to the purchasers in CalPX's markets. The IOUs were net purchasers in the
25 markets, while the Participant Creditors were generally net sellers.

26 During the course of the FERC Refund Proceeding, the IOUs, along with California Attorney
27 General, the California Public Utilities Commission and the California Department of Water
28 Resources (collectively, the "California Parties"), settled with substantially all of the Participant

1 Creditors in CalPX's markets. FERC approved such settlements, as well as the use of the CalPX
2 clearinghouse as the source of the majority of such settlement funds. CalPX's initial calculations of
3 refund amounts therefore had to be trued up to account for the amounts that had been paid out
4 pursuant to such settlements. The California Parties, with assistance from CalPX and the CalISO,
5 performed such true-up calculations. On April 22, 2020, the California Parties filed these
6 calculations in the FERC Refund Proceeding pursuant to their *Petition for Approval of (1) Settlement*
7 *Overlay Calculations, (2) Final Payments of Amounts Owed and Owing, (3) Termination of the*
8 *Activities of the California Power Exchange, and (4) Related Relief*, which is annexed to the RFJN
9 to as Exhibit B thereto (the "Overlay Petition").

10 On May 20, 2021, FERC issued the FERC Overlay Order. In the such order, FERC stated:

11 As an initial matter, we note that the Settlement Overlay [sic]
12 Compliance Filing [i.e., the Overlay Petition] is the result of the joint
13 efforts of the California Parties, CAISO, CalPX, and affected market
14 participants. These entities worked diligently for almost two years to
15 perform these complex settlement overlay calculations, while resolving
16 disputes that arose during the process. Moreover, . . . after the
17 Settlement Overlay Compliance Filing was submitted, the California
18 Parties worked with Riverside, SMUD, and APX and APX Participants
19 to resolve outstanding issues. As a result, the Settlement Overlay
20 Compliance Filing is uncontested.

21 FERC Overlay Order ¶ 60.

22 In the FERC Overlay Order, FERC accepted the proposed methodologies used in the Overlay
23 Petition to calculate the Refund Claims. FERC also accepted the final amounts owed and owing to
24 market participants pursuant to such calculations, and as between CalPX and the CalISO, subject to
25 final interest calculations and adjustments that had occurred since the submitted amounts had been
26 calculated. *Id.* ¶¶ 1, 33. FERC additionally approved the procedures set forth in the Overlay
27 Petition for CalPX to perform the financial clearing of its markets based on the final amounts owed
28 and owing to market participants. *Id.* ¶¶ 28-44. FERC further accepted the process for winding
down CalPX's operations, concluding its Case and dissolving its corporation. *Id.* ¶¶ 45-47.

Significantly, regarding the Plan, the FERC Overlay Order states:

We find that once this order becomes final, the refund calculations
accepted in this order are appropriate to use for the distribution

procedures under CalPX's Plan of Reorganization.

Id. ¶ 63. Also significantly, FERC recognized that the approval of the Procedures would also be sought in this Court:

[T]he California Parties propose that approvals will be sought in both the CalPX and PG&E bankruptcy courts, eliminating any concern or question that PG&E and CalPX are authorized to implement final clearing pursuant to this process notwithstanding their pending Chapter 11 bankruptcy cases.

Id. ¶ 31.⁴

C. The Confirmation Order and Plan Incorporate FERC's Orders

The Confirmation Order states in pertinent part that "[t]he Plan properly provides for the involvement of the Federal Energy Regulatory Commission ('FERC') with respect to matters within its jurisdiction and as more specifically identified throughout the Plan." Confirmation Order ¶ L; *see id.* ¶¶ 13 (providing that the Confirmation Order shall constitute governmental units approvals, "except to the extent the Plan or applicable law explicitly requires that a particular determination be made by FERC."), 14 (providing that the Plan is binding, and stating that: "[n]othing in this paragraph, however, shall alter the provisions of the Plan requiring notices to or approvals by FERC.").⁵

Also, the Plan provides: "Nothing in the Plan is intended to nor does the Plan confer jurisdiction, power or authority upon, or modify the jurisdiction, power or authority of, any judicial

⁴ *Cf. ETC Tiger Pipeline, LLC*, 171 FERC ¶ 61,248, 62829 and n.57 (2020) (order on pet. for decl. order) (recognizing that with regard to "the interaction between the Bankruptcy Code and . . . the FPA," "the law is unsettled in this area."); *ETC Tiger Pipeline, LLC*, 172 FERC ¶ 61,155, 62078 and n.11 (2020) (denying reh'g; same); Richard E.B. Dornfeld, *A Kafkaesque Process? FERC Jurisdiction During Chapter 11 Bankruptcy*, 46 Mitchell Hamline L. Rev. 1, 36 (2019) ("by its very terms, section 1129(a)(6) assumes a 'regulatory commission' with rate regulatory authority will be involved in the reorganization process by exercising its normal authority."); Humphrey R. Kweminy, *Resolving the Jurisdictional Tussle Over Power Purchase Agreements in Electricity Utility Bankruptcy: Lessons from PG&E's Recent Chapter 11 Reorganization*, 49 Cap. U.L. Rev. 277, 313 and n.235 (2021) ("the reorganization of utility companies presents 'an extensive and perplexing array of circular questions' arising from the interpretation of language in Section 1129(a)(6).").

⁵ In addition, the Effective Date of the Plan, which (as stated above) occurred on April 1, 2003, had been conditioned on FERC's approval. Plan § II.32 (defining Effective Date as "[t]he date which is the last of . . . (iii) the date any FERC approvals or notices to FERC required with respect to the use of funds from the Settlement Clearing Account for the Class 3/4/5 Account, the Reorganized Debtor Expense Reserve, the Litigation Expense Reserve, and all related sub-reserves.").

1 or regulatory body.” Plan § IV.G. Additionally, Plan Exhibit 3 *Allowance and Distribution*
2 *Procedures* provides:

3 The amount of each Class 6 and 7 claim shall be determined in
4 accordance with a calculation methodology or allocation established
5 pursuant to rule, order or judgment of FERC, and in accordance with
6 Section III.C.3 of the Plan. . . . Payments from the Settlement Clearing
7 Account shall be made on account of Class 6 and Class 7 Allowed
8 Claims, subject to such adjustments and priorities, and in a manner, as
may be established by FERC. . . . The Reorganized Debtor shall comply
with all orders of FERC respecting the allowance and payment of
Refund Claims.

9 *Id.* Exh. 3 § B.1. Under such Plan exhibit, initial, interim, and final distributions are also subject to
10 FERC orders. *Id.* § B.2, 3 and 4; *see id.* §§ B.6 (Distributions to Class 7 through CalISO subject to
11 FERC orders); C.2 (“All distributions under the Plan shall be made in compliance with FERC
12 orders.”). Therefore, pursuant to the Confirmation Order and Plan, the Plan’s terms that would
13 apply in the absence of a FERC order are substantially subject to any conflicting terms in FERC
14 orders, including the FERC Overlay Order.

15 IV.

16 ARGUMENT

17 A. The Plan Provides for FERC to Determine the Amounts of the Class 6 and Class 7 18 Claims and the Manner of Their Distribution

19 In accordance with FERC’s jurisdiction pursuant to the FPA over wholesale electricity rates,
20 the Plan expressly provides for FERC to determine the amounts of the Class 6 and Class 7 Claims
21 and the manner of their distribution:⁶

22 The amount of each Class 6 and Class 7 claim shall be determined in
23 accordance with a calculation methodology or allocation established
24 pursuant to rule, order of judgment of FERC, and in accordance with
25 Section III.C.3 of the Plan. . . . Payment from the Settlement Clearing
26 Account shall be made on account of Class 6 and Class 7 Allowed
27 Claims, subject to such adjustments and priorities, and in such manner,
as may be established by FERC.

28 ⁶ As stated above, the Plan provides that payment of Class 6 and Class 7 claims shall occur when “authorized
or allowed by FERC.” Plan § III.C.3, Classes 6 and 7.

Plan Exh. 3 *Allowance and Distribution Procedures* § B.1. Section III.C.3 of the Plan states:

As soon as practicable when Cash is available for distribution and distribution has been authorized or allowed by FERC, all funds remaining in the Settlement Clearing Account after . . . payment of any other amounts authorized by FERC, shall be distributed or reserved on account of Class 6 and Class 7 Allowed Claims in the manner and to the extent authorized by FERC, and in accordance with the Allowance and Distribution Procedures. The allocation of funds in the Settlement Clearing Account between claims in Classes 6 and 7 shall be in accordance with the determination of FERC.

Id. § III.C.3, Classes 6 and 7. The Plan further directs that CalPX “shall comply with all orders of FERC respecting the allowance and payment of Refund Claims.” *Id.* Exh. 3 *Allowance and Distribution Procedures* § B.1.⁷

The Plan also provides that, “[w]ith respect to a claim in Class 6 or 7, the claim may only be determined to be an Allowed Claim in accordance with section B.1 of the *Allowance and Distribution Procedures*.” *Id.* § II.2 (definition of “Allowed Claim”). Such section B.1 provides that:

Forty-five (45) days following the entry of such order or judgment or adoption of such rule [of FERC], unless and to the extent that such rules, order or judgment is stayed, the claim shall be deemed to be an Allowed Claim in such amount when the calculation or allocation is made.” (Plan, Section B.1 of the *Allowance and Distribution Procedures*”).

Id. Exh. 3 *Allowance and Distribution Procedures* § B.1.

Thus, pursuant to the Plan, the Refund Amounts of the Class 6 and Class 7 Claims and the manner of their distribution are to be determined by FERC. FERC determined such matters on May 20, 2021, in its FERC Overlay Order, which has not been stayed. The Class 6 and 7 Claims therefore become Allowed Claims on July 4, 2021, forty-five days after the issuance of the FERC Overlay Order.

⁷ A “Refund Claim” is “a claim, other than a Chargeback claim, of a Participant Creditor or IOU for a refund ordered by FERC to be paid by or through CalPX pursuant to the terms of the CalPX Tariff or CalISO Tariff for market transactions.” Plan § II.51.

B. The FERC Overlay Order Governs the Calculation and Distribution of Class 6 and Class 7 Claims

1. FERC Accepted the Uncontested Class 6 and Class 7 Claims Refund Amounts and Related Processes Recommended in the Overlay Petition

By its FERC Overlay Order, FERC accepted the recommendations set forth in the Overlay Petition with respect to: (a) the methodology for the calculation of the Refund Amounts of the Class 6 and Class 7 Claims, (b) the Refund Amounts of the Class 6 and Class 7 Claims calculated pursuant to such approved methodology, (c) the true-up of such Refund Amounts for applicable interest and any subsequent adjustments to market participants' accounts, (d) the manner and timing of the distribution of Refund Amounts by CalPX, and (e) the processes for winding down CalPX's operations and funding for such activities.

In accepting the calculations and procedures recommended in the uncontested Overlay Petition, FERC stated that "the settlement overlay filing at issue here addresses the final market clearing process in this proceeding, which has spanned more than 20 years" FERC Overlay Order ¶ 2.⁸

In accepting the calculations of the Class 6 and 7 Refund Claims set forth in the Overlay Petition, as well as the recommended procedures for their distribution and for the wind down of the CalPX, FERC noted that the Overlay Petition:

is the result of the joint efforts of the California Parties, CAISO, CalPX and affected market participants. These entities worked diligently for almost two years to perform these complex settlement calculations, while resolving disputes that arose during the process.

Id. ¶ 60. FERC also noted that the Overlay Petition is uncontested by the parties to the proceeding and concluded that it "represents a just and reasonable resolution of a lengthy and complicated proceeding" and that "the prompt implementation of the proposed 15-step market clearing process will bring this proceeding to long-awaited closure in an orderly manner." *Id.* ¶¶ 60-62.

⁸ FERC then recounted many of the significant issues that had been litigated and determined in the FERC Refund Proceeding subsequent to FERC's finding in November 2000 that California's market structure and market rules for wholesale sales of electric energy were seriously flawed, causing unjust and unreasonable rates. FERC Overlay Order ¶¶ 3-13.

2. **By Its Terms, the Plan Is Subject to the Terms of the FERC Overlay Order Rather Than Its Allowance and Distribution Procedures for Class 6 and Class 7 Claims to the Extent They Conflict**

As stated above, although Exhibit 3 of the Plan sets forth *Allowance and Distribution Procedures*, such procedures provide that FERC shall determine the calculation and the distribution procedures for the Class 6 and Class 7 Claims, and direct CalPX to “comply with all orders of FERC respecting the allowance and payment of Refund Claims.” Plan Exh. 3 §§ B.1 (“The amount of each Class 6 and Class 7 claim shall be determined in accordance with a calculation methodology or allocation established pursuant to rule, order or judgment of FERC” and “Payments from the Settlement Clearing Account shall be made on account of Class 6 and Class 7 Allowed Claims, subject to such adjustments and priorities, and in such manner, as may be established by FERC” *Id.* § C.2 (“All distributions under the Plan shall be made in compliance with FERC orders.”).

In fact, the *Allowance and Distribution Procedures* have been mooted by events that have occurred over the last almost 20 years. As recognized by FERC:

CalPX explains that the Plan of Reorganization approved in 2002 by the bankruptcy court set forth **provisional** procedures for distributions to market participants. According to CalPX, those procedures **have been mooted by subsequent events** and will be superseded by a Commission [i.e., FERC] order to be issued in the instant proceeding.

FERC Overlay Order ¶ 56 (emphasis added).

Drafted in 2002, the Plan’s *Allowance and Distribution Procedures* had envisioned initial, interim, and final distributions to the holders of Class 6 and Class 7 Allowed Claims, while expressly stating that such procedures were subject to FERC’s ultimate orders on claims distributions. Plan Exh. 3 §§ B.2, B.3, B.4. These *Allowance and Distribution Procedures* also included a certification procedure for distributions to Class 6 and Class 7 Claims whereby at least fifteen days prior to any distribution CalPX would prepare a certificate stating: (1) the total amount to be distributed to Classes 6 and/or Class 7, (2) the amount due on the holder’s Allowed Claim, (3) the amount to be distributed to the Allowed Claim holder based on the information maintained by CalPX, (4) the source of the distribution, (5) the obligations to which such distribution should be applied, and (6) the date of the proposed distribution. *Id.* Exh. 3 § B.5.a. Each Allowed Claim holder would be

1 required to sign the certificate under penalty of perjury either certifying that the amount of its
2 Allowed Claim stated in the certificate is true and correct or stating another amount. Such
3 *Allowance and Distribution Procedures* also included provisions for the forfeiture of an Allowed
4 Claim if the holder failed to return the certificate. *Id.* Exh. 3 § C.5.

5 Under the FERC Overlay Order, the initial and interim disbursements have been eliminated
6 because it provides for only one final disbursement of Refund Amounts to market participants,
7 which may be followed by a supplemental disbursement of any excess amounts withheld from the
8 final disbursement of Refund Amounts to account for the possibility that one or more net sellers may
9 not pay the full amount owed to CalPX. The Plan also had required CalPX make distributions by
10 mail, unless otherwise agreed by the party making the distribution. The FERC Overlay instead
11 requires that distributions be made by CalPX pursuant to notarized wire instructions provided by
12 market participants. The FERC Overlay Order also provides for different procedures regarding
13 unclaimed distributions. Market participants that do not provide notarized wire instructions will not
14 receive payment on the date that distributions are made, and any amounts owed to them will be
15 retained by CalPX for forty-five days after the final payment date pending receipt of such
16 information. If such wire information is not thereafter provided, any amounts owed will be paid to
17 other market participants pursuant to a methodology specified in the Overlay Petition. Overlay
18 Petition at 45.

19 The certification procedures from the Plan were eliminated in the FERC Overlay Order
20 because the Refund Amounts were set forth in the Overlay Petition and they were uncontested by
21 any market participant. The FERC Overlay Order sets forth the fifteen-step process (instead of the
22 certification procedure) for the final allowance and distribution of the Refund Amounts. FERC
23 Overlay Order ¶¶ 28-44. The procedures in the FERC Overlay Order and Overlay Petition include:
24 (1) a final true-up for interest and subsequent payments/charges to participants' accounts, (2) market
25 participants providing notarized wiring instructions to CalPX for payment of their Class 6 and Class
26 7 Claims, (3) CalPX issuing invoices of final amounts owed/owing by/to participants, and (4)
27 publicly noticed payment dates, which provide for amounts due to the CalPX clearinghouse to be
28 paid prior to amounts to be paid out in order to clear the markets. In addition, the FERC-accepted

1 procedures include an allocated Default Fund, and CalPX will file with FERC an accounting of any
2 unpaid amounts once CalPX has cleared its markets. Overlay Petition at 48-49; FERC Overlay
3 Order ¶ 42. Market participants will have ninety days thereafter to request that FERC take
4 enforcement action against such defaulting participants. *Id.*

5 In addition, the Plan had contemplated that the distribution of funds held by CalPX on
6 account of Class 7 Allowed Claims would be made through CalISO, unless otherwise ordered by
7 FERC. Plan Exh. 3 § B.6. Class 7 Claims are those arising from IOU transactions in the CalISO
8 markets for which CalPX acted as the scheduling coordinator, as well as CalISO's claims. However,
9 this procedure was drafted before the settlements between the IOUs and the Participant Creditors in
10 which the markets of the CalPX and CalISO were combined for refund purposes. The Refund
11 Amounts set forth in the Overlay Petition that were accepted by FERC thus necessarily combined
12 the amounts owed/owing by a participant in both the CalPX and CalISO markets. As part of these
13 FERC-approved settlements, amounts due by the CalISO were funded from the CalPX Settlement
14 Clearing Account in exchange for a credit on the CalPX clearinghouse's debit balance with the
15 CalISO. The Overlay Petition and the FERC Overlay Order therefore eliminated the Plan's
16 procedure that Class 7 Claims be paid by CalPX through the CalISO.

17 The Plan's *Allowance and Distribution Procedures* were drafted almost twenty years ago and
18 prior to the settlements between market participants pursuant to the FERC Refund Proceeding. The
19 Plan expressly states that such procedures are subject to subsequent FERC orders. By its FERC
20 Overlay Order, FERC has accepted the allowance and distribution procedures that are set forth in the
21 Overlay Petition, which were uncontested by all parties to the proceeding and which take into
22 account the litigation and settlements in the FERC Refund Proceeding. Therefore, the Procedures
23 should be approved by this Court.

24 **C. The FERC Overlay Order Adopts Processes for Wind Down and Dissolution**

25 The Plan sets forth the "limited purposes" of CalPX as the Reorganized Debtor, which are to:
26 (1) maintain and preserve its books and records and produce any required information therefrom, (2)
27 perform necessary calculation and data processing functions with respect to such records, (3) make
28 authorized disbursements and payments, and (4) perform all other acts called for under the Plan or as

1 may be authorized by the Bankruptcy Court, FERC or another court with jurisdiction in furtherance
2 of CalPX's exempt and public purposes. *Id.* § III.D.2.a. The Plan further provides that CalPX:

3 shall be dissolved when it has performed all of its duties under this Plan,
4 including the final disposition of all of the property, claims, rights and
5 causes of action of the debtor and its estate, payment of all
6 administrative expenses, and distribution of assets and proceeds as
provide in this Plan, subject to any FERC approval or notice that may
be required.

7 *Id.* § III.D.2.e.

8 In its April 1, 2003 order approving the provisions of the Plan, FERC likewise directed that
9 CalPX be "dissolved following completion of these functions, subject to Commission approval."
10 *California Power Exch. Corp.*, 103 FERC ¶ 61,001 (2003) (order approving plan) (annexed to RFJN
11 as Exh. C). By its Overlay Order, FERC has approved the wind down process for CalPX upon the
12 final clearing of its markets and payment of the Class 6 and 7 Allowed Claims. FERC determined
13 that, "[t]he wind-down process for CalPX [set forth in the Overlay Petition] also appears to be a
14 reasonable means of ensuring that CalPX is able to perform its remaining obligations prior to its
15 dissolution." FERC Overlay Order ¶ 62.

16 In 2006, FERC approved an uncontested Rate Case Settlement reached by CalPX and its
17 market participants for CalPX's continued funding pursuant to rate case filings until its prescribed
18 activities were completed. *California Power Exch. Corp.*, 113 FERC ¶ 61,017 (2005) (approving
19 settlement) (annexed to the RFJN as Exh. D). The Rate Case Settlement provided for the placement
20 of a maximum of \$7.5 million into a segregated subaccount within the Settlement Clearing Account
21 for payment of CalPX's final wind down expenses. In 2020, FERC approved the use of such funds
22 in specified amounts for CalPX's final wind down expenses once the FERC Overlay Order becomes
23 final and nonappealable. *See* June 11, 2020 FERC Acceptance of CalPX's Rate Schedule No. 1 for
24 Rate Period 37 (annexed to the RFJN as Exh. E) ("Rate Period 37 Acceptance"); April 30, 2020
25 CalPX Rate Case Filing for Rate Period 37 ("Rate Case Filing"); Testimony of David K. Gottlieb
26 (Rate Case Filing Exh. CPX-1) (the "Gottlieb Testimony") at 28-44.

27 The activities necessary for CalPX to wind down its operations, close its bankruptcy
28 proceeding, and dissolve the CalPX corporate entity are set forth in the Overlay Petition, as well as

1 in CalPX's rate schedule for Rate Period 37 ("Rate Period 37 Schedule") and FERC's acceptance of
2 this Rate Period 37 Schedule. *See* Overlay Petition at 50-53; Rate Period 37 Acceptance; Rate Case
3 Filing; Gottlieb Testimony. These wind down activities include the retention and ultimate
4 destruction of CalPX's books and records. *See* FERC Overlay Order ¶ 64; Overlay Petition at 52.
5 In its Rate Period 37 Acceptance, FERC approved procedures whereby CalPX's books and records
6 will be maintained for a six-year period prior to destruction in order to comply with requirements of
7 insurance carriers providing run-off insurance for CalPX and its Board of Directors. CalPX's books
8 and records will be accessible to FERC and CalPX market participants during this period, although
9 CalPX does not anticipate any such requests given that the Overlay Petition was uncontested by
10 participants, and the FERC Overlay Order is final and non-appealable. *See* Gottlieb Testimony. A
11 records custodian designated by CalPX will coordinate any such requests that may occur.

12 FERC has also accepted CalPX's proposed procedures in order to provide for lease
13 obligations and office closure expenses, payments due to employees, purchasing run-off insurance
14 for the corporation and the Board of Directors, obtaining Bankruptcy Court approval to close the
15 CalPX bankruptcy case, and preparing and filing final tax returns and corporate dissolution
16 documents. *See* Rate Period 37 Acceptance. CalPX requests that this Court likewise approve these
17 Procedures and funding mechanisms in order to wind down CalPX's operations and its corporate
18 entity.

19 **D. CalPX Seeks Court Approval to Implement the FERC Overlay Order to Clear Its**
20 **Markets, Pay the Class 6 and Class 7 Allowed Claims, and Wind Down Its Operations**

21 FERC's Overlay Order and its acceptance of the refund methodologies, amounts, and
22 distribution procedures, as well as the procedures to wind down CalPX that are set forth in the
23 Overlay Petition, effectively concludes over two decades of litigation before FERC resulting from
24 the 2000-2001 California electricity crisis. The fact that the Overlay Petition was ultimately
25 uncontested by any market participant or party to the FERC Refund Proceeding demonstrates that its
26 provisions are accepted by all parties and its procedures are appropriate and feasible to implement.

27 By this Motion, CalPX therefore seeks the approval of this Court to implement the FERC
28 Overlay Order, including FERC's acceptance of the provisions of the Overlay Petition with respect

1 to:

- 2 (1) the methodologies for calculating the Class 6 and Class 7 Claims;
3 (2) the refunds and other amounts comprising the Class 6 and Class 7 Claims;
4 (3) the processes and Procedures for the allowance and distribution of payments with respect
5 to the Class 6 and 7 Claims, as an alternative to the *Allowance and Distribution Procedures* set forth
6 in Section B, Exhibit 3 of the Plan; and
7 (4) the processes, Procedures, and funding for the wind down of CalPX operations; the
8 closure of its chapter 11 case; and the dissolution of its corporate entity as set forth in the Overlay
9 Petition and Rate Period 37 Acceptance.

10 For all the foregoing reasons, CalPX requests that this Court grant this Motion.

11 **V.**

12 **NOTICE**

13 Notice of this Motion has been provided to this Court, the office of the United States Trustee,
14 FERC, CALPX/CAISO market participants that are owed/owing refund amounts pursuant to the
15 FERC Refund Proceeding⁹ and parties on this Court's ECF service list and/or requesting special
16 notice:

17
18 the FERC service list for the FERC Refund Proceeding docket, and all parties on this Courts
19 ECF service list and/or requesting special notice. In light of the circumstances and the relief
20 requested herein, the Reorganized Debtor submits that no other or further notice is required.

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⁹ The movant is also emailing parties to the FERC Refund Proceeding Docket EL00-95 who are on FERC's
email service list for that docket.

VI.

CONCLUSION

WHEREFORE, the Reorganized Debtor respectfully requests that the Court enter an order approving the Procedures, and grant such other and further relief as the Court deems appropriate and just.

DATED: July 1, 2021

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Robert M. Saunders
Robert M. Saunders
Special Counsel to Reorganized Debtor

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **REORGANIZED DEBTOR'S MOTION FOR ORDER IN AID OF CONSUMMATION OF CHAPTER 11 PLAN APPROVING FINAL CLEARING OF ITS MARKETS, PAYMENT OF CLASS 6 AND 7 CLAIMS, AND WIND DOWN OF OPERATIONS PURSUANT TO CONFIRMED AND EFFECTIVE PLAN AND AN ORDER OF THE FEDERAL ENERGY REGULATORY COMMISSION; MEMORANDUM OF POINTS AND AUTHORITIES** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **July 1, 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **July 1, 2021**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **July 1, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA OVERNIGHT MAIL:

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☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 1, 2021
Date

Myra Kulick
Printed Name

/s/ Myra Kulick
Signature

SERVICE INFORMATION FOR CASE NO. 2:01-bk-16577-ES

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